

REMARKS

This Amendment supplements the Amendment under 37 C.F.R. § 1.114(c) filed April 16, 2009. Entry and favorable reconsideration are respectfully requested. Upon entry of the Supplemental Amendment, claims 1-3 and 5-8 will be pending in the application. Claim 4 is canceled without prejudice or disclaimer. Claims 5 and 6 are amended to correct dependency accordingly.

Applicants thank the Examiner for granting an interview on May 1, 2009, and the opportunity to discuss possible claim amendments to address issues raised in the Office Action.. Arguments presented in the Amendment under 37 C.F.R. § 1.116 filed February 17, 2009 and the Amendment under 37 C.F.R. § 1.114(c) filed April 16, 2009 are incorporate herein by reference, as necessary and appropriate.

Summary of Amendments

The present specification is amended to correct an inadvertent error at page 17, line 22, which occurred during the translation of the Japanese-language PCT application into English. The sentence “After being filled, the emulsion was kept at room temperature or refrigerating temperature” should read “After being filled, the emulsion was kept at room temperature or 5°C,” when translated correctly. The corresponding portion of the PCT application is page 9, line 16. The priority document of JP 2002-371030 (which was received by the USPTO and available at PAIR) also supports the temperature of 5 °C at page 10, paragraph [0055].

The specification (the paragraph bridging pages 7 and 8) is amended to include “The edible oils used in the present invention have a cloud point of about 4.4°C (40°F) or lower as listed in, for example, Bailey’s Industrial Oil and Fat Products, Ed. Daniel Swern (1982).

The Bailey was well known reference in the art and shows cloud points of various oils and fats, including those listed and explained in the present application. For example, those include, but not are limited to, peanut oil, olive oil, or soybean oil. Bailey shows that the peanut oil has a cloud point of 40 °F (about 4.4 °C) and others oils have a cloud point lower than 40 °F. Based on the fact that the disclosure of the specification fully explains the kinds of the edible oils employed in the invention and their cloud points were well known and referenced in the art at the time the application was filed, the amendment to the specification does not introduce new matter. Applicant provides further

Claim 1 is amended to recite that the oil in the water-in-oil type emulsion of claim 1 is an edible oil which has a cloud point (ASTM) of about 4.4°C (40 °F) or lower. Support for the amendment can be found at least at the paragraph bridging pages 17 and 18 of the present specification. Additionally, Applicants submit that the specification lists peanut oil, for example, at page 7, line 21, and the peanut oil is known to have the cloud point (a temperature where crystals form) of 40 °F (about 4.4 °C) according to Bailey's Industrial Oil and Fat Products (hereafter referred to as "Bailey's"). Moreover, other edible oils listed in the specification, for example, soybean and olive oils have a cloud point lower than 40 °F. A copy of Bailey's is submitted herewith for the Examiner's consideration.¹

In the present specification, it is described that "As the fats and oils according to the present invention, which are used for the composition made into a water-in-oil emulsion by combining with emulsifier, vegetable fats and oils, such as canola oil, soy bean oil, corn oil,

¹ No IDS is required to submit and have the reference be considered by the Examiner because the reference is submitted as evidence directed to an issue of patentability raised in an Office Action and is timely presented. MPEP 609.05(c).

coconut oil, palm oil, palm kernel oil, cacao oil, peanut oil, butter oil; animal fats and-oils, such as milk fat, beef tallow, lard, fish oil; mixed oil of these oils, and a processed oil of these oils; and diacylglycerol can be used." See page 7, lines 16-24 of the present specification. As is clear from these descriptions, oils hydrogenated or treated otherwise in such a way to modify the properties of the oil are distinguished from oils which are not hydrogenated or subjected to other treatment.

In addition, at Table 5.3 of Bailey's, "winterized cottonseed oil" and "cottonseed oil" are described separately, and the processed oil and non-processed oil are hence distinguished in this reference. In this regard, "winterizing" is a process in which oil is cooled to crystalline and precipitate glyceride having high melting point and the matter having high melting point is then removed by filtration or the like. Applicants submit herewith "Fats and Oils: An Outline of Their Chemistry and Technology" by H. G. Kirschenbauer (1960) to further clarify the definition of the term "winterizing."²

Accordingly, the oils used and exemplified in the specification are the same kinds of oils listed in Bailey's, and they differ from the oils used in the invention of Castenmiller.

Claims 1-3 and 5-8 are Patentable over References

Applicants respectfully submit that currently presented claims 1 is patentable, as the subject matter defined in the claims are not taught or suggested by Castenmiller, individually, or in any reasonable combination with Clapp and Sejpal. Claims 2, 3 and 5-8 are also patentable by virtue of their dependence from claim 1. Detailed discussions on the teachings of Castenmiller,

² No IDS is required to submit and have the reference be considered by the Examiner because the reference is submitted as evidence directed to an issue of patentability raised in an Office Action and is timely presented. MPEP 609.05(c).

Clapp and Sejpal were presented in previous Amendments and are incorporated herein by reference.

Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection of the present claims.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number **202-775-7588**.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Sunhee Lee/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Sunhee Lee
Registration No. 53,892

WASHINGTON DC SUGHRUE/265550

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CUSTOMER NUMBER

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